

# Case C-314/09

**Stadt Graz**

**v**

**Strabag AG and Others**

(Reference for a preliminary  
ruling from the Oberster Gerichtshof)

(Directive 89/665/EEC — Public procurement — Review procedures — Actions for  
damages — Unlawful award — National rule on liability based on a presumption  
that the contracting authority is at fault)

Judgment of the Court (Third Chamber), 30 September 2010 . . . . . I - 8771

## Summary of the Judgment

*Approximation of laws — Review procedures in respect of the award of public supply and public  
works contracts — Directive 89/665 — Duty of Member States to make provision for a review  
procedure*

*(Council Directive 89/665)*

Directive 89/665 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 92/50, must be interpreted as precluding national legislation which makes the right to damages for an infringement of public procurement law by a contracting authority conditional on that infringement being culpable, including the case in which the application of that legislation rests on a presumption that the contracting authority is at fault and on the fact that the latter cannot plead that because it has no individual abilities, it cannot be held subjectively responsible for the alleged infringement.

where appropriate, a procedural alternative compatible with the principle of effectiveness underlying the objective pursued by that directive of ensuring effective review procedures only when the possibility of damages being awarded in the event of infringement of the public procurement rules is no more dependent than the other legal remedies provided for in Article 2(1) of that directive on a finding that the contracting authority is at fault. It makes little difference in that regard that the national legislation does not impose on the person harmed the burden of proving that the contracting authority is at fault, but requires the latter to rebut the presumption that it is at fault, while limiting the grounds on which it can rely for that purpose.

The remedy of damages provided for in Article 2(1)(c) of Directive 89/665 can constitute,

(see paras 39-40, 45, operative part)